The Child's Hospital *and* New York State Nurses Association. Cases 3–CA–16339 and 3–CA–16657

August 24, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Exceptions filed to the judge's decision in this case[1] present the issue of whether the Respondent, in the context of a union organizing campaign, made threats of loss of employee benefits and interrogated an employee about her union support.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Child's Hospital, Albany, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] On April 9, 1992, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Alfred M. Norek, Esq., for the General Counsel.
Michael J. Smith, Esq. (Roemer & Featherstonaugh), for the Respondent.
Richard Silber, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on February 25, 1992, in Albany, New York. The amended consolidated complaint herein, which issued on December 31, 1991,[1] was based upon unfair labor practice charges filed on May 28 and October 23, and amended charges filed on July 25 and December 31 by New York State Nurses Association (the Union). The complaint alleges that, on a number of occasions, The Child's Hospital (Respondent), interrogated its employees about their Union and protected concerted activities and threatened its employees with closing in the event that they chose the Union as their collective-bargaining representative, and threatened its employees with the loss of benefits, including ''pigouts,'' in the event that the Union was selected as their collective-bargaining representative. The complaint further alleges that on about August 28 Respondent promulgated, and has since maintained, a rule restricting the literature that may be placed on its bulletin board in order to discourage its employees from joining or assisting the Union. All this is alleged to violate Section 8(a)(1) of the Act.

Upon the entire record, including the briefs received and my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a not-for-profit New York state corporation with its place of business located in Albany, New York, has been engaged in business as an acute care hospital and surgical care center. Annually, in the course and conduct of its operations, Respondent derives gross revenues in excess of $500,000 and purchases and receives goods and services in excess of $50,000 from points located outside the State of New York. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent does not contest the fact that the Union is a labor organization within the meaning of Section 2(5) of the Act, and I so find.

III. THE FACTS

There are three allegations of unlawful statements by Respondent's agents to registered nurses (RNs) employed in Respondent's operating room (the O.R.) on May 9, June 4, and the end of June. In addition, there is an allegation that on August 28, Respondent instituted and subsequently maintained a rule restricting access to the bulletin boards at the hospital in order to discourage its employees from joining and assisting the Union. The ''players'' here are Barbara Graig and Patricia Klimkewicz, RNs, who were employed in Respondent's O.R. Klimkewicz ended her employment with Respondent in December. For Respondent, Michael Murphy, its assistant administrator, is alleged to have interrogated and threatened its employees and Terry Hurley, chief financial officer for Respondent's parent, is alleged to have interrogated its employees regarding their union activities. The implementation of the restrictions on the use of the bulletin boards was announced by Karen Harper, Respondent's director of nursing, whose responsibilities began to include the O.R. on August 27, after the Board-conducted election.[2] These allegations will be discussed chronologically.

Graig testified that on May 9, while she was at the secretary's area of the O.R. speaking to Klimkewicz, Murphy asked them if he could talk to them and they all went into the adjacent office of Arthur Hanley, Respondent's assistant director of nursing. When all three were in the room, Mur-

[1] Unless indicated otherwise, all dates referred to herein relate to the year 1991.

[2] The Union filed a petition on May 6. The election was conducted on August 23 and the ballots were impounded. No final certification has yet issued.

phy handed them a letter dated that day from Steven Lauko, Respondent's chief executive officer, addressed to all RNs, announcing that they had been notified a few days earlier of the Union's petition. The letter briefly stated Respondent's position, basically, that, in order to remain competitive, Respondent would be best served by a partnership with its employees, without a union. The letter also stated: ''In the coming weeks, while the nurses' union may continue to promise or imply that they will provide job security, better benefits, etc., for our Registered Nurses, it can in no way guarantee that any such thing will take place.''

Graig testified that Murphy asked them to read the letter and asked them if they had any questions; they didn't. Murphy said that if there was a union at Respondent they would have to pay dues, and if the Union told them to strike they had to strike; if they crossed the picket line they could lose two-thirds of their pay. Murphy also said: ''with a union that if they had, if the union says that we have to work eight-hour shifts, five eight hour days, that the four ten-hour days would be abolished.''[3] Graig further testified that Murphy said:

> And he also stated that with a contract, if the O.R. was either closed because of the lack of surgical cases or if it was a light day, that with the union, we probably would not be able to leave early or just take the day off like we had in the past.[4]
>
> He also made reference to the fact that we would no longer be able to have pig outs either. . . . We would not be able to have such a feast if, indeed, the union was voted in.[5]

On cross-examination, she testified that Murphy never said that these three subjects were negotiable items, would have to be negotiated with the Union or would be subject to collective bargaining.

Klimkewicz testified that on May 9, while she was talking to Graig, near the secretary's desk in the O.R., Murphy approached them and said that he would like to speak to them. They went into Hanley's office and Murphy gave them Lauko's May 9 letter. After they had an opportunity to look at the letter, Murphy told them:

> If the union gets in, we will no longer have pig outs. We will not be able to work our four ten-hour shifts. We may have to go back to the eight-hour five-day working. If the O.R. schedule is slow, we cannot take the day off or use our vacation time or so forth. If that's what union says.

She also testified that they discussed her recent trip to Europe and Murphy said that ''if the union gets in, I would not be able to do that.'' During this discussion Murphy never mentioned collective bargaining or negotiations.

Murphy testified that on the day in question, he asked Graig and Klimkewicz if he could speak to them. They went into Hanley's office and he gave them Lauko's letter. He asked them if they wanted to discuss the letter and said that he wanted to talk to them about his concerns about why a third party was not needed. He told them that with a union he would not ''have the luxuries that I now had which was being able to be very, very flexible with the staff. . . . And I explained that those luxuries I may not have if it wasn't spelled out in the contract.'' He brought up the subject of combined leave time: ''Because I felt that I would not be allowed to do some of the things that I was doing routinely for the past ten years that I've been at [Respondent].'' He testified: ''I indicated that I would be very restrictive on what I could do if it wasn't spelled out in the contract.'' The discussion of benefits was preceded by a statement that the benefits were all part of collective bargaining. Regarding the discussion of the pig-outs and the 4-day, 10-hour week: ''Again, I was saying I would not be able to afford those luxuries which I was able to do in the past ten years.'' He testified that he never said that if the union got in they would lose benefits; rather, he stated: ''Under the terms of a contract or collective bargaining, I could not assure anybody what conditions, hours of operation, benefits, etcetera would be.'' He told Graig and Klimkewicz that: ''All those issues would be items for negotiation.''

The next allegation involves a discussion between Graig and Murphy on June 4. Graig testified that on that day Murphy asked if he could speak with her and they went to the in-service office at the facility. When they sat down Murphy showed her a copy of the unfair labor practice charge that was filed by the Union on May 28 and asked her to read it. The charge does not name Murphy. He told her that he felt ''personally attacked'' by the charge and asked her if she had any knowledge of the charges; he did not ask who had made the complaints against him. She said that she didn't understand what Section 7 was, but, as far as discrimination, which was mentioned in the charge, she had heard about an incident at the facility allegedly involving discrimination. Murphy then stated that he was going to go to the hearings and: ''He would know eventually who had made the allegations against himself.'' Graig testified that, prior to this conversation, she was not aware that the Union had filed the charge, and had not previously identified herself to Murphy as a union supporter. In addition, he never told her that she didn't have to answer his questions.

Murphy testified that he first saw the unfair labor practice charge on the day it arrived at the facility, May 30. After seeing the charge he spoke to about 15 of the RNs, including Graig, about it. He told her that he was not aware that he had been harassing, intimidating, or discriminating against the nurses since the union activity began and Graig said that she wasn't aware of it either. He testified further that together with the unfair labor practice charge he gave Graig a memorandum, dated June 4, that was addressed to all RNs; briefly, the memorandum stated that the Union filed an unfair labor practice charge (''in an attempt to gain a campaign advantage with you'') alleging that the Respondent coerced and discriminated against the RNs, but with no specific allegations, and he was confident that the Board would find the

[3] Graig and Klimkewicz and some of the other RNs in the O.R. were then working 40-hour weeks, consisting of 4 10-hour days.

[4] The recent practice had been that on those days when the O.R. was slow or closed and all the regular RNs were not needed, some were allowed to take the day off, with or without pay.

[5] ''Pig outs'' are celebrations when an employee in the unit is getting married, had a child or has graduated, or for a holiday. Each employee brings in a dish and they have a 1-hour lunch period instead of the usual 30 minutes.

allegations to have no merit. When he spoke to the other nurses, he asked them, basically, the same thing: ''Are you aware of me harassing or intimidating anyone?'' When he was asked by one of the nurses (not Graig) who made the charges, he said that he assumed that if there was a hearing he would learn at that time who made the charges.

Klimkewicz attended the representation hearing at the Board office on about June 20. A few days later she was told by a fellow employee that Terry Hurley, Respondent's chief financial officer, wanted to speak to her. She went into his office and they spoke about the Board hearing. He asked her why the nurses were so upset and she said that it was because of the combined leave time issue. He then asked her if she was involved with the Union and she asked him if Lauko had told him to ask that. He said: ''No, I'm asking that on my own behalf.'' She had never previously been called into Hurley's office, had never socialized with him, and was never told that speaking with him was voluntary.

Hurley, while an admitted agent of Respondent, is a financial officer of the parent corporation and has no direct supervisory authority over the RNs. He testified that Klimkewicz is a ''social acquaintance'' of his; he has, at times, met her in local establishments in the area and in about 1986 she dated his roommate. In addition, prior to late June, she had been in his office on a number of occasions to discuss classes she was taking or other subjects. He testified that shortly after the Board hearing, he called her to his office and said:

> What are the problems here? I'm surprised that there was even a petition for a union. And is there anything that . . . I should know? You know, it was more on a casual frame of mind.

She asked him who set him up to ask the questions and he answered that nobody did. On rebuttal, Klimkewicz testified that she never dated the individual whom Hurley identified as his roommate, but has, occasionally seen Hurley and his wife at local bars and said hello.

The final allegation involves the alleged unlawful implementation of a rule restricting access to bulletin boards at the facility beginning on about August 28; it is alleged that this was meant to discourage the employees from joining or assisting the Union. There are bulletin boards throughout the facility, some of which are covered with glass. The O.R. has two bulletin boards: one was over the medication refrigerator, which usually contained information regarding medication, such as recalls or new medication that was meant to substitute for some existing medicine. The O.R. bulletin board that was the subject of most of the testimony was one that was located behind the secretarial desk outside of Hanley's office in the O.R. Prior to August 28, this bulletin board contained newspaper articles, interdepartment memos, the staffing schedule in the O.R. and numerous personal notes, including birth and wedding announcements, baby showers, recipes and announcements of social events of interest to the employees. Sometime prior to August 28, this bulletin board also contained a caricature of Lauko. At about the time of the election, this bulletin board also contained newspaper articles about the Union's attempt to represent Respondent's RNs. Graig testified that the only requirement for postings on this bulletin board was ''to locate yourself a thumbtack'' and post the notice. Klimkewicz testified: ''I was not aware there was a policy or procedure.'' Each testified that no prior approval was needed for a posting.

Ernest Canfield, Respondent's director of human resources, testified that his department's administrative policy manual contained rules for posting on the four glass-enclosed bulletin boards at the facility, the only bulletin boards that are controlled by his department; the manual stated that for the other bulletin boards at the facility, access depended upon the discretion of the departments in which they are located. Canfield also testified that over the last 4 or 5 years Respondent has distributed an employee handbook containing the following provision (which was still in effect in August):

> Within the facility there are several glass enclosed bulletin boards containing specific information as required by law. You should become familiar with their locations and the information contained therein.
>
> The facility also provides bulletin boards for employee use. Items to be posted must be submitted to and approved by the Personnel Department. Items will be posted for a limited time.

Harper has been employed by Respondent as its director of nursing; effective August 27, her responsibilities included the O.R. On August 28 a staff meeting was held with the entire O.R. staff, Hanley and Harper. Harper distributed a memorandum to those present. It states that because of ''the additional responsibilities of the O.R. and PACU being included under my direction, I find it necessary to remind you of certain existing policies.'' The first three sections involve dress code, tardiness and personal phone calls. The only section herein relevant, ''Bulletin Board,'' states:

> The bulletin board is to be used for interdepartmental memos only. Posting will be for no longer than 5 days. The only exclusion will be for ''Thank You'' notes from patients/employees. The O.R. Supervisor is to approve all items to be posted.

Harper asked if there were any questions. Graig said that she had never previously heard of any requirement of prior approval for bulletin board postings, and she felt that it was in retaliation for the employees asking for union representation. Harper denied that the rules had anything to do with the Union; she said that she was taking charge of the department and ''she had to start somewhere.'' Graig testified that after August 28 this bulletin board only contained interdepartmental memos, staffing schedules and similar documents, as well as some thank you cards, including one from Klimkewicz for a party the staff gave her. She further testified that Harper said at the August 28 meeting that there was no change, that this had always been Respondent's policy. Graig testified: ''if it was hospital policy in regards to that bulletin board, it was never treated in that manner. It was always used as a general bulletin board for the O.R. staff.'' Klimkewicz testified that from August 28 until the time she ended her employment with Respondent, this bulletin board ''was bare just about.'' It contained only interdepartmental memos and the O.R. schedule.

Harper testified that she assumed the responsibility of the O.R. on August 27, in addition to the other nursing units which she had previously supervised. She issued the August

28 memorandum to all the nurses at the facility ''to bring all of nursing service together as one department, I felt that it was very important that all of nursing be treated the same, that there would not be any sort of discrepancy between operating nurses versus unit nurses.'' The only difference in the rules related to the dress code for O.R. RNs as compared to the other RNs at the facility. Harper testified that the bulletin board policy that she informed the staff of on August 28 was not a new policy; rather she was informing the staff that she expected them to follow existing policy. Prior to August 28 she observed, and ''was very concerned about,'' cartoons and caricatures of physicians and staff personnel on the bulletin board, and considered it ''unprofessional.'' Both before and after August 28, union-related materials were placed on the bulletin boards in the O.R. and were not removed. However, the principal items on the bulletin board since August 28 have been interdepartmental memos, as well as occasional thank you cards. During this same period she removed some catalogs and caricatures from the bulletin board. She testified that under the new rules, an RN would go to the ''O.R. supervisor and ask if something could be posted.'' She subsequently testified, however, that there was no need for the supervisor to determine whether an item was ''appropriate''; rather, the supervisor dated it (to begin the 5-day posting period) and posted it. She doesn't believe that any posting was refused although, as stated earlier, caricatures have been removed.

Graig testified that staff members, supervisors, and surgeons had access to the bulletin board in question. Patients are in the area as well, but they are usually cataract patients or plastic reconstructive patients who are usually on stretchers and would be unable to read the notices on the bulletin board. Visitors of patients would not have access to the bulletin board because they ''would never be that far into the O.R.'', except ''once in a blue moon.'' Vendors sometimes are in the area speaking to Hanley. Harper testified that in addition to the bulletin board behind the secretary's desk in the O.R. and the one over the medication refrigerator, there was a bulletin board outside the O.R. coffeeroom. As regards the O.R. coffeeroom bulletin board, she testified that vendors and physicians are in that area. In addition, visiting family members ''walk past'' this bulletin board. When Harper was asked on cross-examination about this testimony, she testified that ''actually,'' she was referring to the bulletin board behind the O.R. secretarial desk which family members, vendors, and physicians would have access to.

IV. ANALYSIS

The first allegation is that Respondent, by Murphy, on May 9, threatened Graig and Klimkewicz with the loss of benefits if the RNs voted in the Union, in violation of Section 8(a)(1) of the Act. The General Counsel stresses the testimony of Graig and Klimkewicz to the effect that Murphy said that these changes would come about ''with the Union'' or ''if the Union was voted in.'' Counsel for Respondent defends that Murphy's statements do not violate the Act because he first explained to Graig and Klimkewicz that he could not assure them what a contract would eventually provide because it was all subject to negotiation.

There is a very thin line between proper and improper statements of this nature. In *NLRB v. Gissel Packing Co.*, 395 U.S. 575 at 618 (1969), the Supreme Court set forth an employer's rights in these situations:

> He may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts, but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment . . . an employer is free only to tell ''what he reasonably believes will be the likely economic consequences of unionization that are outside his control'' and not ''threats of economic reprisal to be taken solely on his own volition.''

In *Piggly Wiggly, Tuscaloosa Division*, 258 NLRB 1081 at 1092 (1981), the administrative law judge (while finding no violation) stated:

> when an employer advises its employees of adverse consequences befalling employees following their selection of a collective bargaining agent, there is a fine line to distinguish between the inference that it is merely advising employees of potential adverse consequences which could flow from such selection, or whether it is impliedly threatening the inevitable likelihood that such consequences will flow to its employees in retaliation for their having selected the union as their collective bargaining representative. This distinction must be drawn based on an analysis of the entire context of the conversation.

In *Brunswick Corp.*, 282 NLRB 794 (1987), the Board reversed the administrative law judge's finding that a certain statement referred to restrictive work practices in some collective-bargaining agreements and therefor constituted a lawful prediction of potential adverse effects of unionization. The Board found a violation, stating: ''Absent any reference to the collective-bargaining process, Turner's statement must be understood instead as a threat of unilateral action to be undertaken in retaliation for unionization.''

The issue is therefor whether Murphy clearly informed Graig and Klimkewicz that the adverse effects that he said unionization might have on their working conditions would result from the collective-bargaining process or whether it would result from action of Respondent to punish them for selecting the Union. This determination is made more difficult by the fact that the three participants each have somewhat different versions of this meeting. Graig and Klimkewicz each testified that Murphy never referred to negotiations or collective bargaining. Graig testified that he preceded his statements with ''with a union,'' ''if the union says'' ''with a contract'' and ''if the Union was voted in.'' Klimkewicz testified that Murphy used the phrases: ''If the Union gets in'' and ''if that's what the Union says.'' Murphy

testified that he told them that he might lose his flexibility if the items ''weren't spelled out in the contract'' and that all the benefits were part of collective bargaining. Although all three were apparently credible witnesses, as it is necessary to make a credibility finding, I would credit the testimony of Graig and (secondarily) Klimkewicz over Murphy. They were more direct in their responses and their testimony was reasonable and believable. I therefor find that Murphy never mentioned negotiations or the collective-bargaining process in explaining the possible changes to Graig and Klimkewicz. Even prefacing a warning with ''if the Union says'' is not enough to clearly inform the employees that Respondent was not going to take action to punish them for selecting a union. When an employer enters this area with employees who are not knowledgeable about labor relations matters, and are keenly aware of any suggestion that involves the loss of benefits, the employer has a duty to *clearly* inform the employees that it could possibly result from the collective-bargaining process. Murphy did not do this, and I therefor find that his May 9 statements to Graig and Klimkewicz violate Section 8(a)(1) of the Act.

In the June 4 incident, Murphy called Graig into an office, asked her to read the Union's May 28 unfair labor practice charge, told her that he felt personally attacked by the charge, and asked her if she had any knowledge of the charges. He also stated that when he went to the hearing he would learn the source of the charges. He never assured her that she didn't have to answer his questions. Firstly, I find that these circumstances do not warrant the strict rules of *Johnnie's Poultry Co*., 146 NLRB 770 (1964). Rather, I find that *Rossmore House*, 269 NLRB 1176 (1984), *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985), and *Bo-Ed Inc*., 281 NLRB 226 (1986), are more on point. They state that the test is whether, *under all the circumstances*, the interrogation reasonably tended to restrain, coerce, or interfere with the employee's Section 7 rights. In this situation, I find that it did not. Although Murphy was assistant administrator of Respondent and it was a one-on-one conversation, the nature of Murphy's questions and comments were clearly not coercive and were not accompanied by any threats. He asked her if she had any knowledge of the charge and that he felt personally attacked by it; he did not ask her whether she was responsible or the names of those who were responsible for the charge. Graig, apparently, did not feel coerced because she told him of some hearsay knowledge of an incident at the facility involving discrimination. For these reasons, I recommend that this allegation be dismissed.

The next allegation involves the alleged interrogation of Klimkewicz by Hurley in late June. This is another difficult credibility issue as Hurley did and said nothing to illustrate a lack of credibility on his part. However, neither did Klimkewicz, and based upon my observation of the two, my reading of the transcript and my knowledge of labor situations and probabilities, I credit the testimony of Klimkewicz. This was a one-on-one situation in Hurley's office. Although Hurley is not a direct supervisor of hers, he has powers regarding employee benefits. Klimkewicz was not an open and vocal union supporter and, having credited the testimony of Klimkewicz, I find that Klimkewicz and Hurley did not maintain enough of a social relationship to make such a conversation permissible. Although Klimkewicz did not appear to be coerced by Hurley's question of whether she was involved with the Union, I find that under all these circumstances this question was coercive and I therefor find that it violates Section 8(a)(1) of the Act. *S.E. Nichols, Inc*., 284 NLRB 556 (1987).

The final allegation involves the August 28 rule restricting access to Respondent's bulletin boards. The General Counsel alleges that the rule was promulgated and enforced to discourage union support among its employees. Respondent alleges that these rules were always in effect and that Harper informed the O.R. RNs about these rules on August 28 because a day earlier she had assumed authority over them and wanted to maintain a uniform policy throughout the facility. I found Harper and Canfield to be open and credible witnesses. Canfield's testimony is supported by Respondent's employee handbook in establishing that for the prior 4 years Respondent has required that items posted on the departmental bulletin boards (such as the one involved herein) have prior approval and can be posted only for a limited time. I found credible and reasonable Harper's testimony that she issued the memorandum on August 28 because on the prior day she assumed responsibility of the O.R. and ''felt that it was very important that all nursing be treated the same.'' The evidence establishes that prior to August 28 caricatures of staff members appeared on the bulletin board. Although I would credit Graig's testimony that, with rare exception, the bulletin board was only readable by staff members, Harper's description of these caricatures as ''unprofessional'' is a fair one, and her decision to more strictly enforce the existing rules is not unreasonable. I also credit the testimony of Harper that both before and after August 28, union-related items were placed on this bulletin board and remained there.

I find that Respondent did not violate the Act when it announced the bulletin board rules on August 28. The evidence establishes that these rules had been in effect for 4 or 5 years, although not strictly enforced, at least, on the O.R. bulletin board in question. Although these rules were announced 5 days after the election, I find that Harper's testimony establishes that it was announced at that time because she assumed responsibility over the O.R. on the prior day. As these rules were announced for legitimate business purposes and not to stifle the employees' union activities, I recommend that this allegation be dismissed. *Predicasts, Inc*., 270 NLRB 1117 (1984); *St. Paul's Church Home*, 275 NLRB 1242 (1985).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act in the following manner:

(a) Threatening its employees with the loss of benefits if they chose to be represented by the Union.

(b) Interrogated its employees regarding their support for the Union.

4. The Respondent did not further violate the Act as also alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to

cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, The Child's Hospital, Albany, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with the loss of benefits if they selected the Union as their collective-bargaining representative.

(b) Interrogating its employees regarding their support for the Union.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post in each department at its facility in Albany, New York, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed as to allegations not specifically found herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employees with the loss of some of their benefits if they select New York State Nurses Association (the Union) or any other labor organization, as their collective-bargaining representative.

WE WILL NOT interrogate our employees regarding their support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their Section 7 rights.

THE CHILD'S HOSPITAL

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''